

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Nanci E. Langley; and  
Robert G. Taub

Ben Franklin, Texas Post Office

Docket No. A2011-24

ORDER AFFIRMING DETERMINATION

(Issued November 7, 2011)

I. INTRODUCTION

On July 15, 2011, the Commission received a petition for review (Petition) of the closing of the Ben Franklin, Texas post office (Ben Franklin post office). The Petition was filed by Benny and Julie Lovell (Petitioners).<sup>1</sup> After review of the record in this proceeding, the Commission affirms the Final Determination to close the Ben Franklin post office.

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<sup>1</sup> Petition for Review Received from Benny and Julie Lovell Regarding Ben Franklin, Texas Post Office 75415, July 15, 2011 (Petition).

## II. PROCEDURAL HISTORY

In Order No. 765, the Commission established Docket No. A2011-24 to consider the appeal, designated a Public Representative, and directed the Postal Service to file the Administrative Record and any pleadings responding to the appeal.<sup>2</sup>

On July 29, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>3</sup> The Postal Service also filed comments requesting that the determination to close the Ben Franklin post office be affirmed.<sup>4</sup>

Petitioners filed a participant statement in support of their petition.<sup>5</sup> On September 23, 2011, the Public Representative filed a reply brief.<sup>6</sup>

## III. BACKGROUND

The Ben Franklin, Texas post office, classified as level EAS-11, provides service from 8:00 a.m. to 4:00 p.m., Monday through Friday. Final Determination at 2. In addition to providing retail services, *e.g.*, sale of stamps, stamped paper, and money orders, it serves 63 post office box customers. Rural delivery is provided to 36 customers. Administrative Record, Item No. 15 at 1.

The Postal Service has made a decision to close the Ben Franklin post office and provide delivery and retail services by rural route delivery administered by the Roxton post office, located 5 miles away. Final Determination at 2. Post office box and retail

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<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 19, 2011 (Order No. 765).

<sup>3</sup> The Administrative Record is attached to United States Postal Service Notice of Filing, July 27, 2011; *see also* United States Postal Service Notice of Filing Corrected Administrative Record—Errata August 1, 2011 (Administrative Record). The Administrative Record includes the Final Determination to Close the Ben Franklin, TX Post Office and Establish Service by Rural Route Service (Final Determination).

<sup>4</sup> United States Postal Service Comments Regarding Appeal, September 8, 2011 (Postal Service Comments).

<sup>5</sup> Participant Statement Received from Benny and Julie Lovell, August 19, 2011 (Lovell Statement).

<sup>6</sup> Reply Brief of the Public Representative, September 23, 2011 (PR Reply Brief).

services are available at the Roxton post office from 8:00 a.m. through 4:00 p.m., Monday through Friday. Administrative Record, Item No. 18 at 1. Retail service is also available at the Pecan Gap post office located 5 miles away from 8:00 a.m. through 4:00 p.m., Monday through Friday. *Id.*

The Postal Service reports that retail window transactions at the Ben Franklin post office averaged nine transactions accounting for 9 minutes of retail workload daily. The Postal Service indicates that with a minimal workload, effective and regular service can be provided instead by rural route service. It also notes that revenues have declined by nearly 40 percent since 2008, and there are no permit mailers or postage meter customers. Final Determination 2.

On January 27, 2011, 99 questionnaires regarding a possible change in service were distributed to delivery customers of the Ben Franklin post office. Questionnaires were also available over the counter for retail customers. *Id.* On February 23, 2011, the Postal Service held a community meeting at the Chapel at the Garden of Memories to address customer concerns. Eighteen customers attended. *Id.*; *see also* Administrative Record, Item No. 24.

#### IV. PARTICIPANT PLEADINGS

*Petitioners.* Petitioners contend that the Postal Service's decision to close the Ben Franklin post office should be returned to the Postal Service for further consideration. Lovell Statement at 1. Petitioners contend that the Ben Franklin post office should not be closed because customers will be inconvenienced. Petitioners acknowledge that the Postal Service has offered to provide the same services at nearby post offices. Petitioners claim, however, that these nearby post offices may be closed in the future leaving customers without direct access to postal services. *Id.* at 2.

Petitioners also maintain that the Postal Service failed to consider the needs of the Ben Franklin community. They add that the Ben Franklin community values personal interaction and that traveling an additional 5 to 6 miles may cause additional burdens for residents. *Id.* at 2.

Petitioners further argue that at the community meeting, the Postal Service representative failed to answer questions regarding how the Postal Service developed its closure proposal. *Id.* at 3.

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to discontinue the Ben Franklin post office. Postal Service Comments at 1. The Postal Service maintains that it has followed the proper closing procedures of 39 U.S.C. § 404(d) and carefully considered the required factors of section 404(d)(2) in making its determination. *Id.*

The Postal Service explains that its decision to close the Ben Franklin post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload generating low and declining revenue;
- the variety of delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact upon the community;
- minimal recent growth in the area; and
- expected financial savings.

*Id.* at 3.

The Postal Service also addresses concerns regarding the effect the closing will have on postal services. The Postal Service explains that closing the Ben Franklin post office will create no hardships to customers because the Postal Service will provide pickup and delivery of mail and sale of stamps by rural route carrier. *Id.* at 8.

*Public Representative.* The Public Representative contends that the decision of the Postal Service to close the Ben Franklin post office should be remanded. PR Reply Brief at 1. The Public Representative argues that the Postal Service's decision has not been adequately justified. While the Postal Service relies on a decline in workload and

revenue, the Public Representative contends that the closing is based solely on the fact that the Ben Franklin post office is operating at a deficit. She notes that such action is in violation of 39 U.S.C. § 101. *Id.* at 6.

The Public Representative further argues that the Postal Service failed to provide a meaningful opportunity for community input. She notes that the community meeting hosted by the Postal Service was poorly attended by the community because it was held mid-week in the afternoon. *Id.* at 8.

## V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

### A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be

appealed within 30 days after the determination is made available to persons served by the office. 39 U.S.C. § 404(d)(5).

Notice of the Postal Service's proposal to close the Ben Franklin post office and continue to provide rural route service was posted at the Ben Franklin and Roxton post offices from March 30, 2011 through May 31, 2011. Administrative Record, Item No. 36 at 2, 3. The Postal Service received four comments during the 60-day period. *Id.* Item No. 40. The Final Determination to close the Ben Franklin post office was posted at the Ben Franklin and Roxton post offices on July 1, 2011. Final Determination at 1; see *also* Administrative Record, Item No. 47 at 9.

Based on review of the record, the Commission finds that the Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

#### B. Other Statutory Considerations

Under section 404(d)(2)(A), in making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. Also, section 101(b) prohibits the Postal Service from closing a small post office solely for losing money. In response to the Postal Service's proposal to close the Ben Franklin post office, customers raised concerns regarding the effect of the closure on postal services. The Postal Service responded to each customer individually. Administrative Record, Item No. 22. Their concerns and the Postal Service's responses are summarized in the Final Determination.

*Effect on the community.* The Postal Service states that the effect of the closing on the Ben Franklin community was extensively considered. Postal Service Comments at 2. As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. On January 27, 2011, the Postal Service distributed questionnaires to Ben Franklin post office delivery customers. Final Determination at 2. Thirty-nine questionnaires were returned.

Twenty responses were unfavorable, two favorable, and seventeen expressed no opinion regarding the proposed alternate service. *Id.*; see *also* Administrative Record, Item No. 23 at 1.

On February 23, 2011, the Postal Service also held a community meeting attended by 18 customers. Final Determination at 2; see *also* Administrative Record, Item No. 24.

Petitioners explain that the Ben Franklin post office was established in 1852 and is an important landmark for the entire area. Lovell Statement at 1. Customers further expressed concern regarding the loss of the community identity. The Postal Service indicates that it will preserve the community's name and ZIP Code. Final Determination at 2.

Customers expressed concern regarding loss of the bulletin board. The Postal Service responds that the bulletin board may have to be relocated. The Postal Service further adds that Government forms normally provided by the Ben Franklin post office will be available at the Roxton post office. *Id.* at 2.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has satisfied the requirement that it consider the effect of closing on the community. 39 U.S.C. § 404(d)(2)(i).

*Effective and regular service.* The Postal Service contends that it has considered the effect the closing will have on service. Petitioners argue that service will be impacted if the Ben Franklin post office is closed because the Postal Service plans to discontinue nearby post offices in the future. Petitioners contend that the Pecan Gap post office, one of the alternative retail locations offered in place of the Ben Franklin post office, is under consideration for possible closure. Lovell Statement at 2. Petitioners raise a valid point. The Commission is currently reviewing the Postal Service's Retail Optimization Initiative and the Pecan Gap post office is under

consideration for possible closure.<sup>7</sup> The Postal Service, however, has not made a final decision to discontinue service at the Pecan Grove post office. The Petitioner's concern does not warrant a remand of the Postal Service's decision.

Some customers express concerns regarding having to travel a further distance to another post office for service. Final Determination at 4. The Postal Service considered the effect on customers who desired not to travel to the Roxton or Pecan Gap post offices. Services provided at the post office will be available from a rural carrier. Most transactions do not require meeting the carrier at the mailbox. *Id.* Stamps by Mail and Money Order application forms are available for customer convenience. Administrative Record, Item No. 23, Analysis of Questionnaires, at 3; Final Determination, at 3, 7.

The Postal Service considered the dependability of rural service provided by the Roxton post office. The Postal Service explained that its carriers attempt to provide service at approximately the same time on a daily basis. Mail volumes and weather conditions, however, can affect delivery times. Rural carriers are required to serve the route expeditiously. Administrative Record, Item No. 23, Analysis of Questionnaires, at 2; Item No. 33, Proposal, at 2, 4; Final Determination at 2, 4.

With respect to the security of the mail, the Postal Service stated that customers may place a lock on their mailboxes. The mailbox must have a slot large enough to accommodate the customer's normal daily mail volume. Administrative Record, Item No. 23, Analysis of Questionnaires, at 2; Item No. 33, Proposal, at 4; Final Determination, at 4.

Upon review of the record in this proceeding, the Commission concludes that the Postal Service has considered its ability to provide a maximum degree of effective and regular service. 39 U.S.C. § 404(d)(2)(A)(iii).

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<sup>7</sup> Docket No. N2011-1, USPS-LR-N2011-1-2. This library reference lists the offices under review in the Retail Access Optimization Initiative.



*Economic savings.* The Postal Service estimates total annual savings of \$35,901. It derives this figure by summing the following costs: postmaster salary and benefits \$40,707; and annual lease costs \$3,600, minus the cost of replacement service \$8,406. Final Determination at 8. The Public Representative asserts that this estimate of savings is inflated. She asserts that the Postal Service will continue to pay both the former postmaster and current postmaster relief after the Ben Franklin post office is closed. PR Reply Brief at 6.

The Commission has stated on numerous occasions that the Postal Service should not compute savings based on compensation costs that are not eliminated by the discontinuance of an office.<sup>8</sup> That does not appear to have happened in this instance. The Ben Franklin postmaster was promoted in February 2010. Final Determination at 1, 9; see *also* Administrative Record, Item No. 44 at 1. Since that time, the post office has been run by a temporary officer-in-charge, a non-career postmaster relief (PMR). Final Determination at 2, 9.

The Public Representative states that the postmaster's status is unclear. She notes that the record indicates that the postmaster was promoted, but that it also suggests he or she may have retired. In either event, the Public Representative contends that the Postal Service overstates potential savings. PR Reply Comments at 6. The status of the former Ben Franklin postmaster is not relevant to computing savings due to discontinuance. The relevant consideration is that the position is vacant.

The record indicates that the non-career postmaster relief may be separated from the Postal Service, but no other employees will be adversely affected by the closing. The record reflects that the Postal Service has considered economic savings and the effect on employees. Final Determination at 9.

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<sup>8</sup> See, e.g., Docket No. A2011-16, Order No. 843, Order Affirming Determination, September 8, 2011; Docket No. A2011-18, Order No. 865, Order Affirming Determination, September 20, 2011; Docket No. A2011-19, Order No. 912, Order Affirming Determination, October 20, 2011; Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010.

*Section 101(b).* Section 101(b) prohibits closing any small post office solely for operating at a deficit. The Public Representative contends that the Postal Service's closing of the Ben Franklin post office violates section 101(b) because none of the reasons it advances is unrelated to Ben Franklin's deficit. PR Reply Brief at 6-7. She states:

The Postal Service cites Ben Franklin's declining revenue, low workload, stagnant population, and postmaster vacancy as if they are four distinct reasons for Ben Franklin's discontinuance....It is illogical and deceiving to portray these problems as independent of Ben Franklin's deficit problem when, in reality, they are three causes and a symptom thereof.

*Id.* at 8.

To be sure, economics plays a role in the Postal Service's decision. Having examined the record, however, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Ben Franklin post office (revenues declining and averaging only nine retail transactions per day), the Postal Service took into account the fact that the postmaster position is vacant and growth in the area has been minimal. In addition, it considered the alternate delivery and retail options available to customers. Postal Service Comments at 3.

## VI. CONCLUSION

Based on the review of the record, the Commission concludes that the Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Ben Franklin, Texas post office is affirmed.

*It is ordered:*

The Postal Service's determination to close the Ben Franklin, Texas post office is affirmed.

By the Commission.

Shoshana M. Grove  
Secretary

Concurring Opinion of Chairman Goldway, Vice Chairman Acton,  
and Commissioner Langley

While we concur with our colleague in this case, we continue to be concerned about a situation that exists here and is likely to arise in other post office closures.

The Postal Service has decided to close the post office in Ben Franklin, Texas. The Postal Service says that substitute delivery and retail service will be provided using a rural route based at the Roxton post office several miles away. Substitute retail service will also be provided at the Pecan Gap post office, several miles away in the other direction.

However, the Pecan Gap, Texas post office is on the list of post offices being considered for closure under the Retail Access Optimization Discontinuance Candidate Facility List filed as part of the request for an advisory opinion in Docket No. N2011-1.

In that proceeding, Postal Service witness Dean Granholm responded to a question about the treatment of post offices that had previously been designated to provide replacement service when nearby offices were closed. Mr. Granholm testified that, with respect to last year, the Service's Change Suspension Discontinuance Center (CSDC) system records and annotates all administrative offices. Mr. Granholm indicated with the CSDC system, he would be aware, under the top down initiative, whether a post office had been annotated as an administrative office. Tr. 1/616-17.

Pecan Gap illustrates a dilemma where post offices offered as a possible alternative for retail service are on the closure consideration list.<sup>9</sup> The Postal Service

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<sup>9</sup> Although Pecan Gap is not the administrative office, it is currently specified as a retail site. If Pecan Gap were to be closed, its status as an alternative would be moot.

should take special care when considering any further changes in service to such locations.

Ruth Y. Goldway

Mark Acton

Nanci E. Langley